

Action No.: 2001-14300  
E-File Name: CVQ20INGRAMRE  
Appeal No.: \_\_\_\_\_

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE OF CALGARY

BETWEEN:

REBECCA MARIE INGRAM, HEIGHTS BAPTIST CHURCH, NORTHSIDE  
BAPTIST CHURCH, ERIN BLACKLAWS and TORRY TANNER

Applicants

and

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA and  
THE CHIEF MEDICAL OFFICER OF HEALTH

Respondents

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PROCEEDINGS  
(Excerpt)

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Calgary, Alberta  
December 21, 2020

Transcript Management Services  
Suite 1901-N, 601 – 5th Street SW  
Calgary, Alberta T2P 5P7  
Phone: (403) 297-7392  
Email: TMS.Calgary@csadm.just.gov.ab.ca

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1 Proceedings taken in the Court of Queen's Bench of Alberta, Courthouse, Calgary, Alberta

2

3 December 21, 2020

Morning Session

4

5 The Honourable

Court of Queen's Bench of Alberta

6 Madam Justice Kirker

7

8 J.R.W. Rath (remote appearance)

For R. Ingram

9 M.M. Rejman (remote appearance)

For R. Ingram

10 J.S.M. Kitchen (remote appearance)

For Heights Baptist Church, Northside Baptist

11

Church, E. Blacklaws and T. Tanner

12 J. Gerke (remote appearance)

For Heights Baptist Church, Northside Baptist

13

Church, E. Blacklaws and T. Tanner

14 N. Parker (remote appearance)

For Her Majesty the Queen and the Chief

15

Medical Officer of Health

16 A. Bartier (remote appearance)

For Her Majesty the Queen and the Chief

17

Medical Officer of Health

18 F.S. Kozak, QC (remote appearance)

For CTV, Postmedia, The Canadian Press, CBC,

19

Global News and Citytv

20 E. Walsh

Court Clerk

21

22

23 (PORTION OF PROCEEDINGS OMITTED BY REQUEST)

24

25 **Decision (Restricted Court Access Order)**

26

27 THE COURT:

All right. Thank you for those submissions and

28

for sending the cases that you did which gave me the opportunity to consider this matter

29

before this morning's hearing; and I appreciate your submissions today which have been

30

helpful.

31

32 The applicants seek to rely upon an affidavit sworn by a person who seeks to be identified

33 by the initials R.K. This requires an application to the Court under Part 6 Division 4 of the

34 *Alberta Rules of Court* for a discretionary restricted court access order allowing the use of

35 a pseudonym. The applicants have complied with the Rules in serving notice of this

36 application on the respondents and submitting the required online e-notice of their

37 restricted access application. I have heard submissions from counsel for the applicants,

38 counsel for the respondents and counsel for certain media outlets who oppose the order.

39

This is my decision.

40

41 In *John Doe v. Edmonton Public School District No. 7*, 2019 ABQB 952, Justice

1 Richardson considered whether to permit an application to use a pseudonym in a judicial  
2 review proceeding. At paragraph 46 of her decision, Justice Richardson observed:

3  
4 The open court principle is the foundation of a democratic,  
5 transparent and accountable justice system. It dictates that court  
6 proceedings are presumptively open and accessible to the public  
7 and this includes unfettered access to court filings, hearings and  
8 decisions. (See *AB v Bragg Communications Inc*, 2012 SCC 46 at  
9 para 11 and *Vancouver Sun (Re)*, 2004 SCC 43 at para 23).

10  
11 Justice Richardson went on in the *John Doe* case to explain at paragraph 5:

12  
13 A court order is required for any person seeking to bring or  
14 respond to an action under a pseudonym. The order is a form of  
15 publication ban. Subject only to exceptional circumstances where  
16 a pseudonym or initials may be used, a person who chooses to  
17 commence a court proceeding must do so publicly.

18  
19 Justice Richardson concluded that the *Dagenais-Mentuck* test should be applied to the  
20 application to use a pseudonym because this test applies to all discretionary orders that  
21 affect the openness of proceedings including allowing a party to proceed anonymously.

22  
23 Similarly in *Kenneth William Alanen v. Tracy Lee-Ann Elliot*, Appeal Number 1901-0108-  
24 AC -- it was an oral decision delivered October 29th, 2019 by Justice Hughes -- there the  
25 applicant brought an application to have his name and his wife's names replaced with  
26 initials due to an alleged risk of irreparable harm to professional reputation. Justice Hughes  
27 found that the *Dagenais-Mentuck* test applied.

28  
29 The parties do not disagree with that. I agree the test applies, and that is what guides my  
30 decision in the application before me.

31  
32 The *Dagenais-Mentuck* test requires that the Court consider first whether such an order is  
33 necessary to prevent serious risk to the proper administration of justice because reasonable  
34 alternative measures will not prevent the risk and, if necessary, whether the order's  
35 beneficial effects outweigh its harmful effects on the rights and interests of the parties and  
36 the public including the effects on the right of free expression which in this case includes  
37 the public interest in open and accessible court proceedings.

38  
39 The applicant seeking a publication ban which includes using initials as a pseudonym, there  
40 is a heavy onus to show a real and substantial risk or threat to the administration of justice  
41 or a serious risk to the public interest more generally.

1  
2 *R. v. Carter*, Action Number 160682894Q2 -- that is the Justice Poelman decision that I  
3 have been referred to today -- Grounds relating to public embarrassment or humiliation or  
4 violation of privacy generally are insufficient to support a publication ban. *Stebner v.*  
5 *Saskatchewan Information and Privacy Commissioner*, 2019 SKQB 91.

6  
7 In the *John Doe* and *Alanen* cases, the courts were not satisfied the restricted access order  
8 for pseudonyms were necessary to prevent a serious risk to the proper administration of  
9 justice, and I am not satisfied that the evidence in this case meets the *Dagenais-Mentuck*  
10 test either. The applicants have not met the evidentiary burden to establish that the order is  
11 necessary to prevent a serious risk to the proper administration of justice.

12  
13 The only evidence I have is that R.K. seeks to use a pseudonym to protect the identity of  
14 his family and because he is still looking for a job. I have no evidence about how or why  
15 disclosure of R.K.'s name poses a serious risk to his ability to find a job or, as his counsel  
16 has said in submissions today, to protect his safety. All I have is counsel's submissions that  
17 R.K. is concerned about an ability to find a job if the personal details set out in his affidavit  
18 are publicly connected with him.

19  
20 I can understand R.K.'s desire to preserve his family's privacy, but that alone is not enough,  
21 particularly in this case where the applicants offer his evidence as evidence in relation to  
22 how the public interest has been affected by the orders of the Chief Medical Officer of  
23 Health and where he is not the only person who has provided such evidence. I have  
24 evidence from others with similar stories.

25  
26 The applicants argue that protecting R.K.'s identity will only minimally offend the open  
27 and accessible court principle. Here they move into the balancing exercise which is not  
28 necessary unless the necessity test is met. But to address their argument, they say that it is  
29 in the public interest that a restricted access order be granted allowing the use of the R.K.  
30 pseudonym so that the Court is provided with evidence about the economic and emotional  
31 difficulties suffered by R.K. following the imposition of the restrictions in the Chief  
32 Medical Officer of Health orders.

33  
34 The applicants argue that if a restricted access order is not granted, it will have a chilling  
35 effect on people willing to share with the court their deeply personal struggles. I have no  
36 evidence to support counsel's argument that there will be any chilling effect on other people  
37 providing evidence about personal matters. The fact that I have affidavits from others  
38 suggest otherwise.

39  
40 So despite counsel's able submissions, I find that a restricted access order is not necessary  
41 to prevent a serious risk to the proper administration of justice in this case; and the

1 application is, therefore, denied.

2

3 Now, counsel, I note that before this application was brought, the affidavit of R.K. was  
4 accepted by the clerk and filed on the court record with the use of a pseudonym. Given my  
5 decision to deny the application, it seems to me that unless R.K. wishes to have his name  
6 disclosed, that that affidavit should perhaps be removed from the court record and not be  
7 referred to in the injunction application. May I hear from you in terms of what you submit  
8 ought to happen to the affidavit that was, in fact, filed.

9

10 MR. KITCHEN: My Lady, James Kitchen here. My Lady, that  
11 seems to make sense to me. I can advise the Court that R.K. has no interest in providing an  
12 affidavit with his full real name. It certainly makes sense to me to have it removed from  
13 the court file.

14

15 THE COURT: Mr. Parker or Mr. Kozak, we just -- there was a  
16 bit of I think a procedural mistake in the sense that the application was -- or the affidavit  
17 was actually accepted and filed before I made my decision. That would not have occurred  
18 had it not been filed before this morning. Do you agree or have any concerns with me  
19 directing that it be removed from the court record in the circumstances? Mr. Parker, Mr.  
20 Kozak?

21

22 MR. PARKER: Sorry, I am going to invite Mr. Kozak to go, and  
23 I will follow. Excuse me.

24

25 MR. KOZAK: The media respondents take no position with  
26 respect to the administrative aspect of what happens to the affidavit. I take it that Mr.  
27 Kitchen is formally declaring that it will not be resurrected or used in the injunction  
28 application; is that correct?

29

30 MR. KITCHEN: I can advise that that is correct.

31

32 THE COURT: Okay.

33

34 MR. KOZAK: So yes, I will confirm that we take no position on  
35 what should happen to it now.

36

37 THE COURT: Okay. Thank you. Mr. Parker?

38

39 MR. PARKER: Yes. For the respondents, we agree with your  
40 comments about it being removed from the court record. It seems appropriate in the  
41 circumstances. Thank you, Justice Kirker.

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THE COURT:

Okay. So I am going to direct that the affidavit of R.K. which was by inadvertence placed on the court record be removed from the court record, given my decision, so that there is not any confusion on the face of the court record about it. So that deals with the preliminary application for the restricted court access order.

(PORTION OF PROCEEDINGS OMITTED BY REQUEST)

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PROCEEDINGS CONCLUDED

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1 **Certificate of Record**

2

3 I, Emma Walsh, certify that this recording is the record made of the evidence in the  
4 proceedings in Calgary Court of Queen's Bench held in courtroom 1003 at Calgary, Alberta  
5 on the 21st day of December, 2020, and that I was the court official in charge of the sound-  
6 recording machine during the proceedings.

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1 **Certificate of Transcript**

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3 I, Charlene Hodge, certify that

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5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the  
6 best of my skill and ability and the foregoing pages are a complete and accurate transcript  
7 of the contents of the record, and

8

9 (b) the Certificate of Record for these proceedings was included orally on the record and  
10 is transcribed in this transcript.

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23 Charlene Hodge, Transcriber

24 Order Number: AL6605

25 Dated: December 31, 2020

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